

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Commercial	)	
Spectrum Enhancement Act and	)	WT Docket No. 05-211
Modernization of the Commission's	)	
Competitive Bidding Rules and	)	
Procedures	)	

TO: The Commission

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these comments in response to the Commission’s *Further Notice of Proposed Rulemaking* in this proceeding.<sup>2</sup> In the *Further Notice*, the Commission sought comment on modifications to certain rules governing auction benefits, such as bidding credits, for small businesses and others qualifying as “designated entities” (“DEs”). The Commission has tentatively concluded that it should restrict the award of DE benefits to otherwise qualified DEs that have a “material relationship” with a “large in-region incumbent wireless service provider.” *Further Notice* at ¶ 1. The Commission also requested comment on whether it should further restrict the award of DE benefits in cases where an otherwise qualified DE has a “material relationship” with a large entity that has a “significant

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<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

<sup>2</sup> *Further Notice of Proposed Rulemaking* in WT Docket No. 05-211, FCC 06-8 (rel. Feb. 3, 2006) (“*Further Notice*”).

interest in communications services,” including “voice or data providers, content providers, equipment manufacturers, other media interests, and/or facilities or non-facilities based communications services providers.” *Id.* at ¶¶ 1, 5.

NAB understands and supports the Commission’s interest in both facilitating the participation of small businesses in competitive bidding and ensuring that only legitimate small businesses obtain the benefits of the DE program. However, the proposal to make a small business ineligible for DE benefits if it has a relationship to any larger entity with an interest in the provision of any type of communications service appears unnecessarily broad. If adopted, this proposal could unduly hinder small businesses in obtaining investors and financing and impede their participation in spectrum auctions.

As a general matter, NAB observes that the Commission’s DE rules should be as narrow as possible while still fulfilling the goal of preventing abuse of the DE program. If the Commission were to adopt unnecessarily restrictive DE rules, small businesses would be more limited in their ability to raise capital and attract investors. As the Commission has previously documented, “access to capital” is a “primary market entry obstacle for small businesses.”<sup>3</sup> Small businesses, especially start-up companies, are unable to obtain financing through methods such as stock offerings, which are more readily available to larger, established companies. *Small Business Report*, 12 FCC Rcd at 16825-26. Consequently, start-ups and other small communications businesses must depend more on other sources of capital, such as personal financing and venture capital. *Id.*<sup>4</sup> In light of the serious difficulties that start-ups and other

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<sup>3</sup> Report, *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16802, 16824 (1997) (“*Small Business Report*”).

<sup>4</sup> Small businesses with fewer assets and less leverage also often experience greater difficulties in securing bank loans than larger, established firms. *Small Business Report* at 16826.

small businesses face in attracting capital sufficient to finance their enterprises and succeed in the communications marketplace, the Commission's DE rules should not exacerbate these problems by inadvertently discouraging investment in small entities by established firms. Overly restrictive DE rules would also be contrary to congressional intent, which clearly favors the elimination of market entry barriers for small businesses and the participation of small entities in spectrum auctions.<sup>5</sup>

Moreover, the need for greatly more restrictive DE rules may be questioned. The Commission's existing rules already provide significant safeguards to ensure that only legitimate small businesses receive DE benefits.<sup>6</sup> To the extent that additional safeguards are needed, the Commission has tentatively concluded to restrict the award of DE benefits to an otherwise qualified DE entity where it has a material relationship with a large in-region incumbent wireless service provider. *Further Notice* at ¶ 1. The adoption of such further limitations should be sufficient to limit a designated entity's relationship with a large in-region communications service provider that could reasonably be expected to have an anti-competitive or other deleterious effect. For instance, this proposed restriction would prevent large incumbent wireless service providers from gaining significant interests in new wireless licensees that would normally be expected to compete with the incumbents in the same region. This proposal, if

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<sup>5</sup> See 47 U.S.C. § 257 (FCC directed to conduct a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications and information services); 47 U.S.C. § 309(j)(3)(B) (in statute granting auction authority, FCC directed to promote the dissemination of licenses among a wide variety of applicants, including small businesses).

<sup>6</sup> See 47 C.F.R. § 1.2110(b) (setting forth rules regarding attribution of gross revenues of an entity and its controlling interests and affiliates to determine whether that entity meets eligibility standards for DE benefits).

adopted, could also help prevent spectrum rights from becoming effectively concentrated in the hands of a few large incumbent wireless service providers. *See Further Notice* at ¶ 8.

However, the Commission's additional proposal for a much broader restriction on financial relationships generally with small entities that would otherwise be eligible for DE benefits would discourage needed investment while not serving any clear anti-competitive or similar purpose. A broadcaster with no wireless licenses providing investment capital to a small entity participating in a wireless auction would not raise the same anti-competitive or related concerns as an in-region incumbent wireless licensee providing such financing. Indeed, Commissioner Adelstein, in his statement on the *Further Notice*, questioned this proposed broader restriction, explaining that the "DE program . . . may be an appropriate opportunity for smaller wireless providers, with the backing of non-wireless companies, to build new networks to compete with large wireless incumbents."<sup>7</sup> But as set forth in the *Further Notice*, the proposal by its terms would prevent small wireless or other communications businesses with relationships with even geographically distant "media interests," such as broadcasters, from qualifying for DE benefits. *See Further Notice* at ¶ 5. Such a rule would not serve the public interest.

In sum, NAB urges the Commission to refrain from making start-ups and other small businesses ineligible to receive DE benefits simply because they have a relationship, such as an investment or similar passive financial arrangement, with an entity (perhaps an even geographically distant one) that has an interest in some (perhaps even unrelated) area of communications. The adoption of such an overly restrictive DE rule would exacerbate the access to capital problems routinely experienced by small businesses, and would discourage the

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<sup>7</sup> And assuming that the Commission does restrict the award of DE benefits to any small entity with a relationship to a large in-region incumbent wireless provider, then small firms will need more than ever to be allowed to raise needed capital from established non-wireless companies, including broadcasters.

“disseminati[on]” of “licenses” to “small businesses,” in contravention of clear congressional intent. 47 U.S.C. § 309(j)(3)(B). As discussed above, the Commission’s interest in preventing abuse of DE benefits in spectrum auctions can be achieved by the adoption of more narrow, targeted rules that directly serve an anti-competitive or similar purpose.

Respectfully submitted,

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BROADCASTERS**

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A handwritten signature in black ink, reading "Jerianne Timmerman", written over a horizontal line.

Marsha J. MacBride  
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Jerianne Timmerman

February 24, 2006